

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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EURIPIDES FRIAS NUNEZ,

Plaintiff,

-against-

NEW YORK LIVE POULTRY, INC.,

Defendants.  
-----X

19 Civ. 9293 (LGS)

ORDER

LORNA G. SCHOFIELD, District Judge:

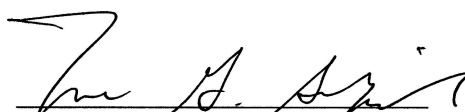
WHEREAS, Defendants filed an Answer to the operative Amended Complaint on February 11, 2020. The Answer does not raise any subject matter jurisdiction defense. Nor did Defendant propose any motion to dismiss by a pre-motion letter, as the Individual Rules require;

WHEREAS, after answering, Defendants stated in the parties' February 13, 2020, joint letter that there is "[n]o subject matter jurisdiction" because their entity does not employ a sufficient number of employees to support a Fair Labor Standards Act claim. It is hereby

**ORDERED** that Defendants shall file a letter, not to exceed three single-spaced pages, setting out their arguments and facts that there is no subject matter jurisdiction, by **February 25, 2020**. Plaintiff shall respond, in a letter not to exceed three single-spaced pages, by **March 3, 2020**. The parties may append evidence to their letters.

Defendants failed to properly raise this defense in accordance with Federal Rule of Civil Procedure 12(b). This rule requires that a subject matter jurisdiction defense "be asserted in the responsive pleading [Answer]," or alternatively, "may [be] assert[ed] . . . by motion" provided that the motion is "made before . . . a responsive pleading [Answer]." Defendants did not propose any motion to dismiss for lack of subject matter jurisdiction before filing an Answer. Nor does the Answer raise this defense. Nevertheless, the Court may *sua sponte* dismiss a case where subject matter does not exist.

Dated: February 18, 2020  
New York, New York

  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE